STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TYLER HANLINE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA HANLINE,

Respondent-Appellant,

and

MATTHEW HANLINE,

Respondent.

UNPUBLISHED
May 4, 2004

No. 249290
Montcalm Circuit Court
Family Division
LC No. 03-000099-NA

In the Matter of LOGAN HANLINE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA HANLINE,

Respondent-Appellant,

and

MATTHEW HANLINE,

Respondent.

No. 249291
Montcalm Circuit Court
Family Division
LC No. 03-000100-NA

In the Matter of IAN HANLINE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA HANLINE,

Respondent-Appellant,

and

MATTHEW HANLINE,

Respondent.

No. 249292
Montcalm Circuit Court
Family Division
LC No. 03-000101-NA

In the Matter of TYLER HANLINE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellant,

v

MATTHEW J. HANLINE,

Respondent-Appellant,

and

MELISSA HANLINE,

Respondent.

No. 250350
Montcalm Circuit Court
Family Division
LC No. 03-000099-NA

In the Matter of LOGAN HANLINE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

No. 250351
Montcalm Circuit Court

MATTHEW J. HANLINE,

Respondent-Appellant,

and

MELISSA HANLINE,

Respondent.

Family Division
LC No. 03-000100-NA

In the Matter of IAN HANLINE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MATTHEW J. HANLINE,

Respondent-Appellant,

and

MELISSA HANLINE,

Respondent.

No. 250352
Montcalm Circuit Court
Family Division
LC No. 03-000101-NA

Before: Jansen, P.J., and Markey and Gage, JJ.

PER CURIAM

In these consolidated appeals, respondent mother Melissa Hanline appeals by right and respondent father Matthew Hanline appeals by delayed application for leave granted from the order terminating their parental rights to the minor children under MCL 712A.19b(3)(g) and (j). We affirm the decision of the trial court with respect to both respondent mother and father.

This case involves the termination of parental rights at the initial disposition as contemplated by MCR 3.977(E). The dispositional hearing took place immediately following the adjudication trial, which was held before a jury. Both respondents assert, based on somewhat different arguments, that reversal is required because the petition for termination of parental rights did not state the statutory basis under which termination was sought. The petition was orally amended the day before the commencement of the adjudication trial to include the statutory basis under which termination was sought, specifically, MCL 712A.19b(3)(g) and (j).

Respondent mother claims that the trial court was deprived of jurisdiction because the petition was so defective that it denied her adequate notice of the proceedings. A failure to provide proper notice of termination proceedings by personal service as required by MCL 712A.12 is a jurisdictional defect that renders all proceedings in the family court void as to the individual who was deprived of notice. *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000). But, the failure of the petition to cite the statutory grounds for termination is a technical defect and "[does] not erode the fact of actual notice," where the petition lists all of the allegations of neglect with specificity, and this defect does not deprive the respondent of due process. *In re Slis*, 144 Mich App 678, 684; 375 NW2d 788 (1985). Respondents do not contend that they were improperly served with the petition and notice of the time and place for hearing. Furthermore, the petition on its face expressly seeks termination of the parental rights of both respondents. Finally, the petition cited all of the factual grounds that were relied on for the termination of parental rights. In these circumstances, respondents were not denied notice so as to deprive the court of personal jurisdiction.

Respondent father further argues that the defect requires reversal because the legal standard for assumption of jurisdiction found in MCL 712A.2, which was cited in the termination petition, is substantially different from the standards for termination of parental rights under MCL 712A.19b(3)(g) and (j). There is no indication in the record, however, that the trial court applied the incorrect standard in the termination proceedings or that the jury was incorrectly instructed in the adjudicational proceedings. To the contrary, the judge expressly applied a standard of clear and convincing evidence in the termination proceedings and expressly cited the language of MCL 712A.19b(3)(g) and (j). In the adjudication proceedings, the jury was instructed appropriately as to the relevant provisions of MCL 712A.2 and was correctly instructed to apply a preponderance of the evidence standard. MCR 3.977(E)(2); *In re S .R.*, 229 Mich App 310, 314; 518 NW2d 291 (1998). We find no prejudice in the asserted error and conclude that it supplies no basis for reversal.

Both respondents challenge the sufficiency of the evidence for termination of parental rights. When, as in this case, termination is ordered at the initial dispositional hearing, the trial court must find by clear and convincing legally admissible evidence that one or more of the allegations of the termination petition are true and establish one of the statutory grounds for termination of parental rights. MCR 3.977(E)(3). Once a ground for termination is established, the court must order termination of parental rights unless there is clear evidence, on the whole record, that termination is not in the child's best interests. *Id*.; *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). A decision terminating parental rights is reviewed for clear error. *Id*. at 356-357. The trial court's decision regarding the children's best interests is also reviewed for clear error. *Id.* A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Terry*, *supra* at 22.

The evidence clearly and convincingly showed that respondent mother has continually failed to provide proper care and custody for the minor children. MCL 712A.19b(3)(g). Respondent mother left Ian and Logan unattended in the home and locked in their room for forty-five minutes in approximately October 2000. She also left the children unattended for periods of fifteen or twenty minutes while she went across the street to a neighbor's home. The home was in filthy and unsanitary condition on at least two occasions. In June 2000 respondent mother left Ian and Logan in a car unattended for at least twenty minutes. Finally, after leaving

the home in October 2002 respondent mother did not maintain regular visits with the children or support them.

On this record we can uphold the determination that there was no reasonable likelihood that respondent mother would not be able to provide proper care and custody for the minor children in the reasonable future. The parenting instructors testified that respondent mother did not change from the beginning to the end of the class. Respondent mother's parenting behavior certainly fell far below a standard of minimally adequate parenting, leaving us with the conclusion that respondent mother would not be able to provide proper care and custody within a reasonable time.

The trial court also was familiar with respondent mother's conduct when she herself was a ward of the court. He noted that she has proven over a long period of time that she must be "pushed and prodded" to perform and is essentially not amenable to change. Although evidence dating back to respondent's minority is not totally reflective of her current and her future ability to parent, it provides some historical support and explanation for her current actions and the determination that there was no reasonable likelihood that she would be able to provide proper care and custody for the minor children in the reasonable future.

We similarly find that the trial court did not clearly err by finding that based on respondent mother's conduct or capacity, there was a reasonable likelihood that the children would be harmed if returned to her. MCL 712A.19b(3)(j). The most serious charges were those involving leaving the children alone unattended. But she also left the children in October 2002 and never demonstrated any desire or ability to see and/or care for the children. Moreover, while the mother was in the home it was unsanitary and witnesses described it as filthy, smelly, littered with garbage bags, dirty diapers, spoiled food and papers on the floor. As the trial court noted, respondent mother essentially walked away from the situation. Because the record contains ample clear and convincing evidence that by reason of respondent mother's conduct or capacity there is a reasonable likelihood that the children would be harmed if returned to her, we affirm the order terminating respondent mother's parental rights.

Respondent father's challenge to the sufficiency of the evidence also fails. The evidence clearly and convincingly showed that respondent father failed to provide proper care and custody for the children by failing to adequately supervise them. The two older children, ages three and four, were repeatedly found unattended outdoors while respondent father slept. On one of those occasions the baby was found crying in his crib with a nearby outside door standing open. The children twice appeared at a neighbor's home some two hundred yards away, and on another occasion were found playing in and around the road one half mile from their home. In February 2003 Logan, then three, drove the family vehicle around the yard until he struck a tree.[1]

The evidence further demonstrated a reasonable likelihood that respondent father will not be able to provide proper supervision in the future. While respondent father clearly put forth maximum effort, the repeated instances in which the children were found unsupervised some

[1] All of these incidents occurred after respondent mother left the home in October 2002.

distance from their home indicate that he lacks the ability to contain them. The conclusion is further supported by the fact that Ian and Logan were found outside unsupervised even after respondent father switched to the day shift. These incidents occurred after respondent father had completed parenting classes and received intensive assistance through a Families First program, and after several months of homemaker assistance. The psychological evaluation of respondent father indicated that he would need adult assistance in order to adequately parent the children and would need another person to act as decision maker. Because he is mildly retarded, respondent father has a great deal of difficulty with problem solving, emergency situations and unusual circumstances, and psychological testimony indicated that no significant improvement in his performance could be expected. All of this evidence clearly and convincingly supported the conclusion that respondent father would not be able to provide proper care and custody, specifically with regard to supervision of the children, in the reasonable future. Therefore, the trial court did not clearly err by terminating respondent father's parental rights under MCL 712A.19b(3)(g).

The same evidence supporting termination of respondent father's parental rights under statutory subsection (g) also establishes a reasonable likelihood that the children would be harmed if returned to him. The children have already been found in situations that pose a serious threat to their bodily safety and even to their lives. The trial court did not clearly err by finding, based upon respondent father's past conduct as well as his capacity, that there was a reasonable likelihood that the children would be harmed if returned to him. MCL 712A.19b(3)(j).

The trial court did not clearly err by finding that termination of respondent father's parental rights was not clearly contrary to the best interests of the children. MCL 712A.19b(5). The record clearly indicated a loving bond between the children and respondent father. However, this evidence must be weighed against the evidence that respondent father has repeatedly allowed the children to place themselves in situations that endanger their safety and even their lives. We cannot conclude that the trial court clearly erred in its resolution of this difficult question by finding that termination of respondent father's parental rights was not clearly contrary to the best interests of the children.

Respondent father also contends that evidence concerning prior incidents regarding which petitioner had investigated and found unsupported by a preponderance of the evidence should have been excluded from the adjudication trial because it was unfairly prejudicial and designed to inflame the jury. But, the testimony concerning these incidents was not inflammatory or more prejudicial than probative. MRE 403. It was unquestionably relevant to show that respondent father "when able to do so, neglect[ed] or refus[ed] to provide . . . care necessary for [the child's] health or morals." MCL 712A.2(b)(1). Moreover, Family Independence Agency worker Charles Davenport explained that a finding of no preponderance did not mean the incident did not happen, but that the investigator did not feel the circumstances at that time rose to the level of abuse or neglect. Under these circumstances, the trial court did not abuse its discretion by admitting evidence of past incidents. We note finally that the allegations in question constituted only a small part of the grounds upon which petitioner sought to establish jurisdiction. The far greater bulk of allegations and evidence relating to respondent father concerned his failure to supervise the children in recent months preceding the filing of the petition to terminate parental rights.

Respondent father finally contends that the trial court abused its discretion by allowing the jury to hear evidence concerning services that had been rendered to the family because such evidence related to the potential termination of parental rights and not to the adjudicational determination of neglect. We believe that the trial court was within its discretion to conclude that this evidence had some tendency, however limited, to prove matters before the jury at the adjudication hearing. In any event, any error in the admission of such evidence was harmless in light of the ample evidence establishing neglect in the form of respondent father's failure to adequately supervise the children.

We affirm.

/s/ Kathleen Jansen
/s/ Jane E. Markey
/s/ Hilda R. Gage